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September 3, 2015

Advanced Metal Forming, Inc
Attn: Jacqueline Beavan
2618 National Ave.
San Diego, CA 92113

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lawrence S. Branton
Registered Agent
701 B. Street Ste. 1255
San Diego, CA 92101

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Advanced Metal Forming, Inc. Violations of General Industrial Permit**

Dear Mrs. Beavan:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Advanced Metal Forming, Inc.'s violations of the State Water Resources Control Board Water Quality Order No. 97-03-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Advanced Metal Forming, Inc.'s facility located at 2618 National Avenue, San Diego, CA 92113 ("Facility" or "Advanced Metal Forming, Inc."), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Advanced Metal Forming, Inc.'s Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation,

¹ On April 1, 2014, the State Water Resources Control Board adopted Order No. 2014-0057-DWQ, which amends the Industrial General Permit ("New Industrial Permit"). These amendments become effective on July 1, 2015. All references to the General Industrial Permit are to the Permit as it existed at the time of the violations noted herein.

protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Advanced Metal Forming, Inc.'s ongoing illegal activities are discharged into San Diego Bay and the Pacific Ocean. The public and members of CERF use these receiving waters to fish, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Advanced Metal Forming, Inc. Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Advanced Metal Forming, Inc. Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Advanced Metal Forming, Inc. enrolled as a discharger subject to the General Industrial Permit on May 13, 1998 for its facility at 2618 National Ave., San Diego, CA 92113. Advanced Metal Forming, Inc. also filed a Notice of Intent to enroll under the New Industrial Permit on April 30, 2015.

Pursuant to Section C(1) of the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. As an enrollee, Advanced Metal Forming, Inc. has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

B. Failure to Monitor

The Advanced Metal Forming, Inc. Owners and/or Operators have failed to sample as required for the 2012-2013, 2013-2014, and 2014-2015 years. In the years, only one rain event was monitored. In fact, the 2014-2015 Annual Report indicates two events were sampled (Section E.1.); however, only one event was sampled but reported twice. (See 2014-2015 Annual Report Form 1).

Sections B(5) and (7) of the General Industrial Permit require dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the Advanced Metal Forming, Inc. Owners and/or Operators, were required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season. Required samples were required to be collected from all discharge points and during the first hour of the storm water discharge from the Facility.

The Advanced Metal Forming, Inc. Owners and/or Operators have failed to meet these monitoring requirements for the 2012-2013, 2013-2014, and 2014-2015 periods, despite the fact that there were numerous qualifying rain events during these wet seasons. (See Exhibit A, rainfall data). The Advanced Metal Forming, Inc. Owners and/or Operators therefore had numerous opportunities to sample but failed to do so.

Every day the Advanced Metal Forming, Inc. Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the Advanced Metal Forming, Inc. Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The Advanced Metal Forming, Inc. Owners and/or Operators are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

C. The Advanced Metal Forming, Inc. Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Though the Advanced Metal Forming, Inc. Owners and/or Operators have consistently failed to monitor as required, what monitoring has been done indicates consistent exceedances and violations of the General Industrial Permit. Discharge Prohibition A(2) of the General Industrial Permit prohibits storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of' such a standard, including the CTR." (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Advanced Metal Forming, Inc. Owners and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising its SWPPP pursuant to section (C)(3).

As demonstrated by sample data submitted by Advanced Metal Forming, Inc., from at least September 3, 2015 through the present, Advanced Metal Forming, Inc. Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of water quality prohibitions and limitations during every significant rain event. The Advanced Metal Forming, Inc. Facility's sampling data reflects numerous discharge violations (see below). Advanced Metal Forming, Inc.'s own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of*

Cal., (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

This data further demonstrates the Advanced Metal Forming, Inc. Facility continuously discharges contaminated storm water during rain events which have not been sampled. (See Exhibit A, rainfall data). As reflected below, for every single rain event the Advanced Metal Forming Owners and/or Operators have monitored, the Facility has exceeded the zinc and nitrogen benchmark. At times, the exceedances for zinc have been as high as almost **44 times** the benchmark.

No.	Date	Parameter	Units	Result	Benchmark/WQO
1	10/19/2010	Zinc	mg/L	.56	.12
2	10/19/2010	Iron	mg/L	1.8	1
3	10/19/2010	Nitrate + Nitrite (N)	mg/L	7.21*	.68
4	3/25/2011	Zinc	mg/L	.64	.12
5	3/25/2011	Aluminum	mg/L	.95	.75
6	3/25/2011	Nitrate + Nitrite (N)	mg/L	.77*	.68
7	11/4/2011	Zinc	mg/L	5.26	.12
8	11/4/2011	Aluminum	mg/L	1.52	.75
9	11/4/2011	Iron	mg/L	3.76	1
10	11/4/2011	Nitrate + Nitrite (N)	mg/L	7.21*	.68
11	12/12/2011	Zinc	mg/L	2.32	.12
12	12/12/2011	Aluminum	mg/L	.96	.75
13	12/12/2011	Iron	mg/L	2.01	1
14	12/12/2011	Nitrate + Nitrite (N)	mg/L	2.52*	.68
15	1/25/2013	Zinc	mg/L	.484	.12
16	1/25/2013	Aluminum	mg/L	.96	.75
17	1/25/2013	Nitrate + Nitrite (N)	mg/L	1.36*	.68
18	3/3/2014	Zinc	mg/L	.19	.12
19	3/3/2014	Nitrate + Nitrite (N)	mg/L	.86*	.68
20	12/3/2014	Zinc	mg/L	047	.12
* Analytical Results included Nitrate-N and Nitrite-N individually. The benchmark is for total Nitrate and Nitrite so the two figures were added together.					

D. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements for the General Industrial Permit is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A). Advanced Metal Forming, Inc. has not developed an adequate SWPPP as required by the General Permit.

The SWPPP has two major objectives: (1) to help identify the sources of pollution that affect the quality of industrial storm water discharges and authorized non-storm water discharges, and (2) to describe and ensure the implementation of BMPs to

reduce or prevent pollutants in industrial storm water discharges and authorized non-storm water discharges. (General Industrial Permit, Fact Sheet, p. IX).

The latest Advanced Metal Forming, Inc. SWPPP, dated June 2015 is non-compliant. The SWPPP fails to mention any receiving body of water, and fails to list any TMDLs for evaluation. The Facility's receiving water (San Diego Bay) is 303(d) listed for multiple constituents. Notably, the San Diego Bay shoreline nearest the Facility (between Sampson and 28th Street) is listed for metals, including zinc. Thus, the SWPPP fails to evaluate the Facility's potential contribution of pollutants for which these receiving waters are listed and for which the Facility routinely exceeds water quality objectives. (New Industrial Permit, §X.G.2.a.ix; XI.B.6.e.).

Further, despite the consistent and continuous water quality violations established by the Facility's monitoring data, the SWPPP BMPs have not been updated to address such exceedances.

Every day the Advanced Metal Forming, Inc. Owners and/or Operators operate the Facility without an adequate SWPPP, is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Advanced Metal Forming, Inc. Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit for not submitting an adequate SWPPP since at least September 3, 2010. These violations are ongoing and the Advanced Metal Forming, Inc. Owners and/or Operators will continue to be in violation every day they fail provide an adequate SWPPP for the Facility. Thus, the Advanced Metal Forming, Inc. Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Advanced Metal Forming, Inc. must develop and implement an updated SWPPP, install BMPs to address the numerous water quality violations, and implement a robust monitoring plan. Should the Advanced Metal Forming, Inc. Owners and/or Operators fail to do so, CERF will file an action against Advanced Metal Forming, Inc. for its prior, current, and anticipated violations of the Clean Water Act. CERF's action will seek all remedies available under the Clean Water Act § 1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day.

CERF may further seek a court order to prevent Advanced Metal Forming, Inc. from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environments will result if the Facility further discharges pollutants into the San Diego Bay. The cessation of

the Facility's discharge will not cause substantial harm to others, and the public interest would be served in preventing discharge of pollutants into receiving waters.

Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

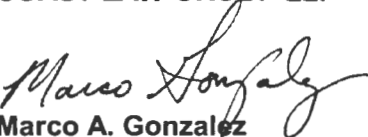
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

Marco A. Gonzalez
COAST LAW GROUP LLP
1140 S. Coast Highway 101
Encinitas, CA 92024
Tel: (760) 942-8505 x 102
Fax: (760) 942-8515
Email: marco@coastlawgroup.com

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez



Livia Borak
Attorneys for
Coastal Environmental Rights Foundation

CC:

Jared Blumenfeld, Region 9 Administrator Alexis Strauss, Deputy Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
Gina McCarthy EPA Administrator Mail Code 4101M USEP A Ariel Rios Building (AR) 1200 Pennsylvania Avenue N.W. Washington, DC 20004	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0110

EXHIBIT A

Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours

NOAA National Climactic Data Center

Stations: **COOP:047740** - SAN DIEGO LINDBERGH FIELD, CA US

Data Types: **HPCP** - Precipitation (100th of an inch)

2009

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
6-Feb	0.61	
7-Feb	0.74	
8-Feb	0.2	
9-Feb	0.21	8:00 AM
10-Feb	0.34	
14-Feb	0.13	
16-Feb	0.62	12:00 PM
22-Mar	0.22	11:00 AM
31-May	0.13	
4-Jun	0.13	
29-Nov	0.35	
7-Dec	0.13	9:00 AM
8-Dec	1.99	
12-Dec	0.13	
13-Dec	0.88	
TOTAL	6.81	

2010

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
18-Jan	0.1	4:00 PM
19-Jan	1.4	1:00 PM
20-Jan	7.4	
21-Jan	1.65	12:00 PM
22-Jan	1.41	
23-Jan	0.29	
27-Jan	0.14	
6-Feb	0.17	11:00 AM
7-Feb	0.27	
10-Feb	0.47	
20-Feb	0.49	
22-Feb	0.12	
27-Feb	0.2	
28-Feb	1.27	
7-Mar	0.38	10:00 AM
8-Mar	0.3	
1-Apr	0.49	
6-Apr	0.15	
12-Apr	0.65	4:30 PM
22-Apr	0.47	
6-Oct	0.43	
20-Oct	0.9	12:00 PM
21-Oct	0.12	
30-Oct	0.38	8:00 AM
20-Nov	0.69	2:00 PM
21-Nov	0.12	11:00 AM
24-Nov	0.87	
20-Dec	0.83	
21-Dec	3.46	8:00 AM
22-Dec	0.48	8:00 AM
26-Dec	0.69	
30-Dec	1.8	9:00 AM
TOTAL	28.59	

Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours

NOAA National Climactic Data Center

Stations: COOP:047740 - SAN DIEGO LINDBERGH FIELD, CA US

Data Types: HPCP - Precipitation (100th of an inch)

2011

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
3-Jan	0.85	
4-Jan	0.1	
18-Feb	0.24	5:00 AM
20-Feb	0.2	
26-Feb	0.8	
27-Feb	0.22	
7-Mar	0.2	
21-Mar	0.89	
22-Mar	0.14	
24-Mar	0.25	
26-Mar	0.15	
9-Apr	0.14	
18-May	0.73	
29-May	0.1	
4-Nov	0.34	4:00 PM
12-Nov	1.04	1:00 PM
12-Dec	0.96	9:00 AM
TOTAL	7.35	

2012

<u>Month</u>	<u>Inches</u>	<u>Time:</u>
23-Jan	0.2	2:00 PM
24-Jan	0.28	
7-Feb	0.23	4:00 PM
14-Feb	0.34	
16-Feb	0.2	
28-Feb	0.72	
17-Mar	0.24	1:00 PM
18-Mar	0.47	
25-Mar	0.43	5:00 PM
1-Apr	0.11	
11-Apr	0.45	
13-Apr	0.33	4:00 PM
26-Apr	0.61	
12-Oct	0.77	
8-Nov	0.14	
1-Dec	0.23	
13-Dec	1.6	8:00 AM
14-Dec	0.28	
15-Dec	0.37	
19-Dec	0.47	
25-Dec	0.37	
30-Dec	0.28	
TOTAL	9.12	

Qualifying Rainfall Events (.1 inches of rain or more) During Business Hours

NOAA National Climactic Data Center

Stations: **COOP:047740** - SAN DIEGO LINDBERGH FIELD, CA US

Data Types: **HPCP** - Precipitation (100th of an inch)

2013

<u>Month</u>	<u>Inches</u>
7-Jan	0.26
25-Jan	0.23
26-Jan	0.73
27-Jan	0.1
9-Feb	0.15
20-Feb	0.3
9-Mar	0.2
21-Nov	0.28
22-Nov	0.2
8-Dec	0.17
20-Dec	0.1
TOTAL	2.72

2014

<u>Month</u>	<u>Inches</u>
3-Feb	0.25
7-Feb	0.37
27-Feb	0.1
28-Feb	0.46
1-Mar	0.76
2-Mar	0.6
2-Apr	0.22
26-Apr	0.13
TOTAL	2.89